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36602 7590 02/03/2009 THE NOBLITT GROUP, PLLC 4800 NORTH SCOTTSDALE ROAD SUITE 6000 SCOTTSDALE, AZ 85251			EXAMINER THOMPSON, MICHAEL M	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/661,756

Applicant(s)

LAVU ET AL.

Examiner

Michael M. Thompson

Art Unit

3629

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14, 19-24 and 29-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14, 19-24 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Claims 15-17 and 25-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Group II, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/07/2008. Claims 15-17 and 25-28 are were cancelled as well.

Response to Arguments

2. Applicant's arguments filed 04-08-2008 have been fully considered but they are not persuasive. Applicant's arguments with respect to claims 1-14, 19-24, and 29-36 have been considered but are moot in view of the new interpretation of the prior art rejection necessitated by Applicant's amendments. Applicant's primary arguments with respect to claims 1 and 2 are related to the use of Table 1. The rejection has been amended to better clarify a rejection based on Applicant's amended claims. In Applicant's characterization of new claim 1, Applicant asserts:

"By comparison. Applicant's probability of occurrence table as exemplified by Figures 6 and 9 and described at page 11, lines 3-22 and page 12, line 28 to page 13, line 1 and as recited in claim 1 as amended includes a plurality of risk categories, each category having a plurality of table entries, each entry including a category specific standardized qualitative probability definition associated with a Pf rating. ***The provision of multiple risk categories each having category-specific standardized qualitative definitions removes variability from the risk management process due to user subjectivity and replaces it with standardized definitions.***"

However, Applicant's own specification appears to recite circumstances where individual users are able to provide the "standardized qualitative definitions" when

accessing the system. Without exhaustive study, some examples might include, pg. 5 lines 26-31 to pg. 6, lines 1-4, for the proposition that new risks allow for the user to "augment their own knowledge and experience" to create an initial set of risks wherein the user "must assess each risk and assign a risk factor (Rf)." On pg 12, lines 25-31 to pg. 13, lines 1-2, which teaches that new risks will allow "the engineer" to "select the qualitative probability definitions 82 that most closely characterizes the risk thereby specifying the value 80 of Pf." Further, the engineer may select from the Severity of Consequence tables to create a severity value for each risk as on pg 19. These statements suggests some level of subjectivity in Applicant's invention. In fact, the "standardized definitions" have inherently been derived at some point in time and where likely subjective or derived from some history of information. However, in addressing Applicant's amendments, and in light of the newly amended rejection, it is the Examiner's position that the qualitative probability definitions are the "levels" in Table 1, and they have an associated qualitative definition as indicated below in the prior art rejection as paragraphs [0033-0034] describe.

In addressing Applicant's arguments with respect to Beverina Applicant states, "[b]everina's tool gives the impression that it is web based when, in fact, it is not. Claim 1 recites a 'web-browser' not a 'web-like browser.'" Please note Beverina at paragraphs, [0015], [0111-0117], **in particular the [0015] and [0111-0116]**, to include [0371].

In addressing claim 4, Examiner's Official Notice is based in fact on a comprehensive definition of the purpose of a Project Manager. An important aspect of

project management is controlling the inherent risks of a project. Risks arise from uncertainty surrounding project decisions and outcomes. Most individuals associate the concept of risk with the potential for loss in value, control, functionality, quality, or timeliness of completion of a project. However, project outcomes may also result in failure to maximize gain in an opportunity and the uncertainties in decision making leading up to this outcome can also be said to involve an element of risk. Project risk is broadly defined as any event or condition that can have a positive or negative impact on the outcome of a project. This wider concept of speculative risk is utilized by the financial industry where decisions regarding uncertainties may be associated with the potential for gain as well as losses, as opposed to the concept of pure risk used by the insurance industry where the uncertainties are associated with potential future losses only. In every field the project manager is responsible for accomplish a task on time. Therefore, when a project were to go overdue, they would be equally responsible for projecting timeframes and/or negative impacts on the project itself.

In addressing claims 5-6, and 19, the Examiner has provided rejections based on Applicant's amendments to claims 5 and 6. With respect to claim 19, it is similarly the Examiner's position that there are similar limitations that have already been addressed in previous arguments and/or claims. In particular, it is asserted that claims 19-24, and 34-36 are rejected under a similar rationale as that of the method claims.

In addressing new claims 29-32 and 34-36, it is asserted that the inherent teachings of Abrahams itself render the limitations of these claims unpatentable. For example, as explained in the 101 rejection of record, Applicant's disclosure recites that

the risk mitigation is a product of a risk review board that looks to past risks and suggests new mitigation plans based on the old plans including preventative and corrective controls. In this respect, Abrahams in Figure 1B shows a system by which existing risk records are used in profiles and new risk records are stored in a knowledge database for use by others. Abrahams states unequivocally in paragraph [0053] that the knowledge base learns over time thereby implying that his system is capable of being used to modify the overall process. Other similar recitations occur in paragraphs [0019], [0058], [0064], and [0070].

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. **Claims 1-14 and 29-33 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.**

The first step in determining whether a claim recites patent eligible subject matter is to determine whether the claim falls within one of the four statutory categories of invention recited in 35 USC 101: process, machine, manufacture and composition of matter. The latter three categories define "things" or "products", while a "process" consists of a series of steps or acts to be performed. For purposes of 101, the analysis of a process is guided by the machine-or-transformation test. *In re Bilski*, ___ F.3d ___ (Fed. Cir. 2008)(en banc).

Based on Supreme Court precedent (*Diamond v Diehr*, 450 U.S. 175,184 (1981); *Parker v. Flook*, 437 US 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876)) and recent precedent from the Federal Circuit from *In re Bilski*, the machine-or-transformation test is a two-branched inquiry; an applicant may show that a process claim satisfies § 101 either by showing that his claim is tied to a particular machine, or by showing that his claim transforms an article. See *Benson*, 409 U.S. at 70. *Certain considerations are applicable to analysis under either branch. First, as illustrated by Benson, the use of a specific machine or transformation of an article must impose meaningful limits on the claim's scope to impart patent-eligibility. See Benson, 409 U.S. at 71-72. Second, the involvement of the machine or transformation in the claimed process must not merely be insignificant extra-solution activity. See Flook, 437 U.S. at 590. If neither of these requirements is met by the claim, the method is not a patent eligible process under 35 U.S.C. 101.*

5. **Claims 1-14 and 29-33** are drawn to **a method for managing risk**. All of the recited method steps can be performed by the user themselves, in the mind of the user or between different users through writing by a user, and therefor these method steps are not tied to a particular machine nor do they transform an article. To qualify as a statutory process, the claim should positively recite in the body of the claim, the machine to which it is tied. For example, by identifying the particular machine that accomplishes the method steps, or positively reciting the article that is being transformed. Furthermore, even if Applicant amends to identify a particular machine, in

the least, it appears that any claim recitation to a particular machine would only constitute "involvement" that is insignificant extra-solution activity. Evidence to support this assertion is found in the limitations themselves when Applicant recites the storing, data gathering/searching and viewing/displaying of information from the database. Additional evidence is found in Applicant's Specification when discussion claims 29-33, indicating that limitations including formulating and storing a new risk mitigation plan is done by a Risk Review Board (pgs. 13 and 14). This evidence indicates that the steps of formulating, and likely implementing are done by the users, administrative or otherwise. In short, the method steps of storing, formulating enterprise searches, viewing, formulating mitigation searches, formulating new mitigation plans, storing and implementing are all accomplished by the users or people and *not a particular machine* and are thus insignificant extra solution activity.

Please note that ***nominal recitations of a machine in an otherwise ineligible method fail to make the method a statutory process.*** See Benson, 409 U.S. at 70 - 72. As Comiskey recognized, "the mere use of the machine to collect data necessary for application of the mental process may not make the claim patentable subject matter." Comiskey, 499 F.3d at 1380 (citing *In re Grams*, 888 F.2d 835, 839-40 (Fed. Cir. 1989)). Incidental physical limitations, such as data gathering, field of use limitations, storing, collecting, sending, receiving, and other forms of insignificant extra solution activity are not enough to convert an abstract idea into a statutory process. In other words, nominal or token recitations of involvement of a machine or transformation

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in a method claim do not convert an otherwise ineligible claim into an eligible one. Ex *parte Langemyr* (2008) and *In re Bilski*, (Fed. Cir. 2008).

Therefore, the applicable test to determine whether a claim is drawn to a patent-eligible process under § 101 is the machine-or-transformation test set forth by the Supreme Court and clarified herein, and Applicants' claim here appears to fail this test. No new matter should be added.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 1-2, 7-11, 13-14 and 29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrahams (2005/0086090) in view of Beverina (2001/0027389).**

8. **As per claim 1**, Abrahams teaches a method of managing risk related to a successful completion of a development project, comprising:

storing a probability of occurrence (Pf) table having a plurality of risk categories (i.e. via Category 2 in Fig. 1B, that shows an example of different Categories that contain sub-indented risk tables such as show in Table 1, p. 4), each said category having a plurality of table entries (i.e. sub-indented risk tables), each entry including a category-specific standardized qualitative probability definition associated with a Pf

rating (i.e. via the risk tables described in Fig. 1C, para [0033-0034] the risk tables are described as actually being qualitative wherein the definition of each level in the table has a qualitative definition or value associated with it, while alternatively the qualitative values may be used directly by an experienced user,) and a severity of consequence (Cf) table (via Table 2, that shows an example of different risk consequences, Table 2, p. 4), identified risks and existing risk mitigation plans in a shared risk database (Fig. 1C shows a template for an identified risk, and control [mitigation] plans, said information must inherently be stored within a database); and viewing the Pf table to select a probability of occurrence Pf for said at least one risk; (via Table 1, that shows an example of different risk probabilities, Table 1, p. 4)

viewing the Cf table to select a severity of consequence Cf for said at least one risk, (via Table 2, that shows an example of different risk consequences, Table 2, p. 4) said Pf and Cf being combined and ranked to define prioritized risk factor Rf (a user selects inherent values of likelihood [Pf] and consequence for a risk [Cf], and ... the system then calculations residual levels of likelihood, consequence and risk rating for the risk [Pf], ¶ 6, lines 6-11), Applicant should note that a similar argument could be made from the Context Profile data store wherein the hierarchy could allow for different risks to fall under different "profiles" (i.e. categories) in particular contexts. This is at least one other interpretation when the reference is given a full reading.

However, Abrahams fails to explicitly disclose

via a web browser, a plurality of users, formulating an enterprise search of the risk database to identify at least one risk.

Beverina in the same field of endeavor [risk management systems] teaches a web browser (Fig. 3), a plurality of users (Fig. 1), formulating an enterprise search of the risk database to identify at least one risk (via ¶ 361, “the user can also search the sites for particular information” where the particular information is a risk, and formulating a mitigation search of the risk database to identify existing risk mitigation plans for the identified risk to enhance the development of new mitigation plans or share with other programs the resources to implement the mitigation plan. (via “risk mitigation [that] also uses threat and countermeasure characteristics in making decisions. Various countermeasures are compared to the specific threat to determine which ones are most effective at mitigating the risk of the threat against the target”, Examiner construes this to be the equivalent of a mitigation plan search as it evaluates existing plans to provide the user with the best alternatives. ¶ 307, lines 9-13)

It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams with the risk management system features of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques.

9. **As per claim 2**, Abrahams teaches the method wherein the probability of occurrence table has a plurality of risk categories, each said category having table entries that include standardized qualitative probability definitions. (via Table 1, p. 4, that shows the plurality of categories ranging from rare to almost certain, and the standardized qualitative probability definitions for each category of risk) Regardless, even though the combination fails to disclose the use of cost and schedule impact

categories, the specific type of categories are deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The storing, formulating and viewing steps would be performed the same regardless of what type of categories are used. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

10. **As per claim 7**, Abrahams fails to explicitly disclose the method wherein the enterprise search includes a combination of at least two parameters including current or historic, risk factor, vendor, component, functional area, category, key work in risk title, key work in risk description, IPT, actionee, actionee/team, lead/submitter, or risk number. However, Beverina, in the same field of endeavor [risk management systems], teaches searches "by categories such as threat type, risk, score and others" (§¶ 363, lines 3-5). Examiner construes risk to be the current risk factor, and threat type to be the category. It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams with the risk management system search features of Beverina. Motivation for the combination is a system where users have easier access to past records, and therefore can use past results easier.

11. **As per claim 8**, Abrahams teaches at least one risk including a combination of risk number, program, risk title and a current risk factor (Fig. 1B displays the risk number next to the risk, and a program is detailed under each consequence [Examiner

construes a program to be a series of steps, in this case the program is the corrective controls], Fig. 1C displays the title, as well as the risk rating). However, Abrahams fails to explicitly disclose that this information is retrieved via a search. Beverina, in the same field of endeavor [risk management systems], teaches searches "by categories such as threat type, risk, score and others" (§ 363, lines 3-5). It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams with the risk management system search features of Beverina. Motivation for the combination is a system where users have easier access to past records, and therefore can use past results easier.

12. **As per claim 9**, Abrahams fails to explicitly disclose the method wherein the web browser provides a transfer link from said at least one risk with its risk mitigation plan to import the selected risk and mitigation plan into another program. However, Beverina, in the same field of endeavor [risk management systems], teaches that "Results from local VAT 200 sessions are transferred to the TIMS 130, in the form of the VAT Database 220, and stored in a database along with sessions from other sites." (§ 364) Fig. 1 further illustrates this detail as risk mitigation plans are created and stored, until they are imported into the TIMS program. It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams with the risk management system features of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques.

13. **As per claim 10**, Abrahams fails to explicitly disclose the method wherein the mitigation search includes a combination of at least two parameters including a risk description, risk status, start date, original planned complete date, planned complete date, and complete date. However, Beverina, in the same field of endeavor [risk management systems], teaches that users can "search and browse the data from the individual VAT 200 sessions by categories such as threat type, risk, score and others." (¶ 363) Figure 50 shows a calendar within that VAT 200 for entry of start and completion dates. A user therefore, would be able to do a mitigation search including the parameters of start date and complete date. It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams with the risk management system features of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques.
14. **As per claim 11**, Abrahams fails to explicitly disclose the method further including automatically generating risk reports including identified risks, prioritized risk factors, and mitigation plans. However, Beverina, in the same field of endeavor [risk management systems], teaches that users can "create, edit and delete report formats to create new and customized reports to meet future needs" (¶ 374, lines 6-7). A user would be enabled to create risk reports including the identified risk, prioritized risk factors, and mitigation plans. It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams with the risk management reporting feature of Beverina. Motivation for the combination is a

system with more features that should produce better risk management analysis and techniques as well as easier sharing of information.

15. **As per claim 13**, Abrahams fails to explicitly disclose the method wherein the web browser has an interface that includes a menu bar with pull-down menu items and menu sub-items for viewing the current program, conducting the enterprise search and conducting the mitigation search and hyperlinks to the Pf and Cf tables. However, Beverina, in the same field of endeavor [risk management systems] teaches a web browser (Fig. 3), with pull-down menu items [viewable in the drawing] and menu sub-items for viewing the current program [viewable in the drawing], conducting the enterprise search [via the search box] and conducting the mitigation search [via the search box] and hyperlinks to the Pf and Cf tables [via the THREATS and VULNERABILITY hyperlinks in the drawing]. It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams with the web based feature of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques as well as easier navigation of information.

16. **As per claim 14**, Abrahams teaches the method wherein the identified risks, risk factors, and mitigation plans for each user are stored in the shared risk database. Figure 1B shows the “knowledge base” construed by Examiner to be a database, containing identified risks, risk factors, and mitigation plans [Examiner construes the corrective control and the preventative control to be a mitigation plan].

17. **As per claim 29**, it is asserted that Abrahams teaches formulating a mitigation search of the risk database to identify existing risk mitigation plans for the identified risk to enhance the development of new mitigation plans or share with other programs the resources to implement the mitigation plan.

In addressing new claims 29-32 and 34-36, it is asserted that the inherent teachings of Abrahams itself render the limitations of these claims unpatentable. For example, as explained in the 101 rejection of record, Applicant's disclosure recites that the risk mitigation is a product of a risk review board that looks to past risks and suggests new mitigation plans based on the old plans including preventative and corrective controls. In this respect, Abrahams in Figure 1B shows a system by which existing risk records are used in profiles and new risk records are stored in a knowledge database for use by others. Abrahams states unequivocally in paragraph [0053] that the knowledge base learns over time thereby implying that his system is capable of being used to modify the overall process. Other similar recitations occur in paragraphs [0019], [0058], [0064], and [0070].

If Applicant disagrees with the Examiner's interpretation of Abrahams, then Beverina in the same field of endeavor [risk management systems] teaches a web browser (Fig. 3), a plurality of users (Fig. 1), formulating an enterprise search of the risk database to identify at least one risk (via ¶ 361, "the user can also search the sites for particular information" where the particular information is a risk, and formulating a mitigation search of the risk database to identify existing risk mitigation plans for the identified risk to enhance the development of new mitigation plans or share with other

programs the resources to implement the mitigation plan. (via "risk mitigation [that] also uses threat and countermeasure characteristics in making decisions. Various countermeasures are compared to the specific threat to determine which ones are most effective at mitigating the risk of the threat against the target", Examiner construes this to be the equivalent of a mitigation plan search as it evaluates existing plans to provide the user with the best alternatives. ¶ 307, lines 9-13)

It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams with the risk management system features of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques.

18. **As per claim 30**, Abrahams and Beverina teach the method of claim 29, wherein the mitigation search identifies both successful and unsuccessful existing risk mitigation plans. (i.e. at least Abrahams and/or Beverina teach that the plans are stored, and therefore by that very nature both good and bad plans will be accessible wherein the knowledge base collects new risk records wherein the risk records include the mitigation or preventative and corrective controls.)

19. **As per claim 31**, Abrahams and Beverina teach the method of claim 29, further comprising: aggregating the risk mitigation plans from a plurality of different users and different programs to update and store a risk mitigation plan on the shared database. (i.e. as taught by at least Abrahams wherein the knowledge base collects new risk records wherein the risk records include the mitigation or preventative and corrective controls.)

20. **As per claim 32**, Abrahams and Beverina teach the method of claim 29, further comprising: sharing resources with other programs to implement the mitigation plan. (i.e. in the least via the use over the internet which inherently interacts with other programs, such as user interfaces.)

21. **As per claim 33**, Abrahams and Beverina teach the method of claim 29, where the risk mitigation plan includes a number of activities, each activity including a description and an assigned Pf and Cf rating. (i.e. this assignment is inherent in the methods described in the prior art, since each project will include categories and risks that will have associated Pf and Cf ratings when they have already been performed and placed in the knowledge database. Essentially, projects already completed will have been given ratings.)

22. Claims 3-6 and 12, are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrahams (2005/0086090) and Beverina (2001/0027389) in view of Examiner's Official Notice.

23. **As per claim 3**, Abrahams discloses the method further comprising tailoring the probability of occurrence table to the select few categories that are relevant to the development project. (i.e. it is inherent in the teaching of Abrahams that a user may reduce or add more categories depending on the project or the number of categories one wishes to consider. Subsequently, any associated Pf tables as described in claim 1 would be on the shared risk database in Fig. 1B.) However, Abrahams fails to explicitly disclose that this is done via a web browser. Beverina, in the same field of endeavor [risk management systems], teaches a browser based risk management

system. It would have been obvious to one skilled in the art at the time of the invention to use the system taught by Abrahams in a web based environment as taught by Beverina. Motivation to combine the two is present as a web based risk management system allows users in remote locations to easily modify and update risk profiles. Furthermore, the use or restriction of user access, or limiting access to an administrator is well known in the art of computer programming. Several systems such as Microsoft operating systems use such features to limit access for users. Similarly there are security programs that operate in similar fashion for the proposition of preventing access to certain features of an operating system. Examiner takes Official Notice with respect to administrative access to a system.

24. **As per claim 4**, the combination of Abrahams and Beverina teaches the claimed invention as mentioned in claim 1, above. Abrahams further teaches the method wherein the severity of consequence table has a schedule impact category with the table entries having a cost impact category with the table entries specifying multiple sub-categories of cost impacts in actual dollars for the development project. (Table 2, p. 4) However, the Abrahams and Beverina combination fails to explicitly disclose table entries specifying an amount in days, weeks or months. Examiner takes Official Notice that it is old and well known in the art of project management to measure negative impacts upon projects like delays in units of time such as days, weeks, or months. It would have been obvious to one skilled in the art at the time of invention to combine the table taught by Abrahams and Beverina with Examiner's Official Notice. Motivation to combine is to have an additional quantifiable way to measure consequences of a

particular outcome. Regardless, even though the combination fails to disclose the use of cost and schedule impact categories, the specific type of categories are deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The storing, formulating and viewing steps would be performed the same regardless of what type of categories are used. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

25. **As per claim 5**, Abrahams teaches the method wherein said multiple sub-categories include development cost (NRE), unit cost (DTC) and operations and support (O/S) categories. (via "in one mode of use, the inherent risk impact cost is aggregated over the inherent cost of each consequence of the risk" where consequences of each risk would inherently include development cost, unit cost, and operations and support costs, ¶ 7, lines 15-17). Regardless, even though the combination fails to disclose the use of multiple sub-impact categories, the specific type of categories are deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The storing, formulating and viewing steps would be performed the same regardless of what type of categories are used. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F .2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F .3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

26. **As per claim 6**, the combination of Abrahams and Beverina and Examiner's Official Notice teaches the claimed invention as mentioned in claim 4, above. Abrahams further teaches the method further comprising the severity of consequence table to select the cost impact sub-categories and specify their dollar amounts (Table 2, p. 4 shows the severity of consequence table which includes cost impact sub-categories and dollar ranges.) Abrahams further teaches a shared risk database for storage as shown in Fig. 1B, element 11. Furthermore, the use or restriction of user access, or limiting access to an administrator is well known in the art of computer programming. Several systems such as Microsoft operating systems use such features to limit access for users. Similarly there are security programs that operate in similar fashion for the proposition of preventing access to certain features of an operating system. Examiner takes Official Notice with respect to administrative access to a system. With respect to the specifics of the sub-categories, the specific type of categories are deemed to be nonfunctional descriptive material and is not functionally involved in the steps recited. The storing, formulating and viewing steps would be performed the same regardless of what type of categories are used. Thus this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed.Cir.1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) and MPEP 2106.01.

27. **As per claim 12**, the combination of Abrahams and Beverina teaches the claimed invention as mentioned in claim 11, above. However, the Abrahams and Beverina combination fails to explicitly teach the method wherein a risk review board

(RRB) report is generated by submitting minutes for a RRB meeting by entering information for each risk covered during a RRB meeting and entering the date of the RRB meeting; and submitting the minutes to generate the RRB report including Number, Title, Actionee, Rf, Risk Level and Comments for each risk. Examiner takes Official Notice that it is old and well known in the art of meetings to generate and submit minutes. Examiner further takes Official Notice that it is old and well known in the art of recording minutes to record topics discussed as well as the date of the meeting.

Beverina, teaches that clauses of a report can include "Data values in the database and results from simple queries of the database that return text or simple data values" (§ 429-432). These results would include information such as Risk Factors, Risk Level and Comments. It would have been obvious to one skilled in the art at the time of invention to combine the system of Abrahams with the reporting features of Beverina in view of Examiner's Official Notice. Motivation to combine is increased communication within a risk management setting.

28. Claims 19-20, 22-24 and 34-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Abrahams (2005/0086090) and Beverina (2001/0027389) in view of Heinrich (6,895,383).

29. As per claim 19, Abrahams teaches a web-based risk management system for managing risk related to a successful completion of a development project, comprising:
a server comprising a shared risk database that stores a probability of occurrence (Pf) table (via Table 1, that shows an example of different risk probabilities,

Table 1, p. 4) and a severity of consequence (Cf) table (via Table 2, that shows an example of different risk consequences, Table 2, p. 4), risk identification information and risk mitigation information (Fig. 1C shows a template for an identified risk, and control [mitigation] plans, where said information must inherently be stored within a database);

However, Abrahams fails to explicitly disclose a web-based risk management tool on the server that provides standardized interfaces for searching, viewing and entering information to and from the shared risk database via a web browser, an intranet, and a plurality of computer workstations in communication with the server via the intranet, each said workstation provided with a web browser to search the database using the standardized interfaces to identify risks, to select entries from the Pf and Cf tables to calculate and prioritize a risk factor Rf for each risk, and to search the database to identify existing risk mitigation plans for the prioritized risks.

Beverina, in the same field of endeavor [risk management systems] teaches each said work station provided with a web browser to search the database using the standardized interfaces to identify risks (Fig. 3), to select entries from the Pf and Cf tables [via the THREATS and VULNERABILITY hyperlinks in the drawing], to calculate and prioritize a risk factor Rf for each risk (where the calculation is accomplished by "calculating a probability that an event will occur; calculating a vulnerability to the event; and calculating a relative risk based on the probability and vulnerability", Claim 13, and prioritizing a risk factor is done by "clicking on a column heading will sort and group the table based on that column", Fig. 16). It would have been obvious to one skilled in the

art at the time of invention to combine the system taught by Abrahams with the browser abilities of Beverina. Motivation to combine is easier access to the system.

However, Abrahams and Beverina both fail to disclose an intranet and a plurality of workstations in communication with the server via the intranet. Heinrich, in the same field of endeavor [risk management] teaches "a system containing a user computer, a network, and a security computer", (Col. 15, lines 46-47) and that the network "may also represent a corporate extranet or intranet" (Col. 15, lines 53-55). It would have been obvious to one skilled in the art at the time of invention to combine the combination of Abrahams and Beverina with the network of Heinrich. Motivation for the combination is to create a risk management system with easy system interaction and easy user communication.

30. **As per claim 20**, Abrahams fails to explicitly disclose the method wherein the web browser has an interface that includes a menu bar with pull-down menu items and menu sub-items for viewing the current program, conducting the enterprise search and conducting the mitigation search and hyperlinks to the Pf and Cf tables. However, Beverina, in the same field of endeavor [risk management systems] teaches a web browser (Fig. 3), with pull-down menu items [viewable in the drawing] and menu sub-items for viewing the current program [viewable in the drawing], conducting the enterprise search [via the search box] and conducting the mitigation search [via the search box] and hyperlinks to the Pf and Cf tables [via the THREATS and VULNERABILITY hyperlinks in the drawing]. It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by

Abrahams with the web based feature of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques as well as easier navigation of information.

31. **As per claim 22**, the Abrahams and Heinrich combination fails to explicitly disclose the system wherein the workstation via the web browser submits an enterprise search that includes a combination of at least two parameters including current or historic, risk factor, vendor, component, functional area, category, key word in risk title, key word in risk description, IPT, actionee, actionee/team lead/submitter or risk number and the server returns via the web browser an enterprise search results list including for at least one risk a combination of risk number, program, risk title, a current risk factor and its risk mitigation plan.. However, Beverina, in the same field of endeavor [risk management systems], teaches searches "by categories such as threat type, risk, score and others". Examiner construes risk to be the current risk factor, and threat type to be the category. Beverina further teaches that users can "search and browse the data from the individual VAT 200 sessions by categories such as threat type, risk, score and others." (¶ 363) Figure 50 shows a calendar within that VAT 200 for entry of start and completion dates. A user therefore, would be able to do a mitigation search including the parameters of start date and complete date. Finally, Beverina teaches a web browser enterprise search (Fig. 3 via the search option). It would have been obvious to one skilled in the art at the time of invention to combine the system of Abrahams and Heinrich with the tools of Beverina. Motivation to combine is creation of a risk management system with easier access to information and ease of modification.

32. **As per claim 23**, the Abrahams and Heinrich combination fails to explicitly disclose the system wherein the workstation via the web browser submits a mitigation search that includes a combination of at least two parameters including a risk description, risk status, start date, original planned complete date, planned complete date and complete date and the server returns existing mitigation plans that satisfy the search parameters. However, Beverina, in the same field of endeavor [risk management systems], teaches that users can "search and browse the data from the individual VAT 200 sessions by categories such as threat type, risk, score and others." (¶ 363) Figure 50 shows a calendar within that VAT 200 for entry of start and completion dates. A user therefore, would be able to do a mitigation search including the parameters of start date and complete date. It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams and Heinrich with the risk management system features of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques.

33. **As per claim 24**, the Abrahams and Heinrich combination fails to explicitly disclose the system wherein the workstations automatically submit identified risks, risk factors and mitigation plans to the shared database, said server automatically generating risk reports including identified risks, prioritized risk factors and mitigation plans for the current project. However, Beverina, in the same field of endeavor [risk management systems], teaches that users can "create, edit and delete report formats to create new and customized reports to meet future needs" (¶ 374, lines 6-7). A user

would be enabled to create risk reports including the identified risk, prioritized risk factors, and mitigation plans. It would have been obvious to one skilled in the art at the time of invention to combine the risk management system taught by Abrahams and Heinrich with the risk management reporting feature of Beverina. Motivation for the combination is a system with more features that should produce better risk management analysis and techniques as well as easier sharing of information.

34. **As per claim 34**, Abrahams, Berverina and Heinrich teach the system of claim 19, wherein existing risk mitigation plans for different risks are stored in the shared database, said web browser configured to formulate a mitigation search of the risk database to identify existing risk mitigation plans for the identified risk, formulate a new risk mitigation plan that's builds upon the one or more existing risk mitigation plans, and store the new risk mitigation plan on the shared database. Claim 34 is rejected under a similar rationale as that of claim 29 *supra*.

35. **As per claim 35**, Abrahams, Berverina and Heinrich teach the system of claim 34, wherein the mitigation search identifies both successful and unsuccessful existing risk mitigation plans. Claim 35 is rejected under a similar rationale as that of claim 30.

36. **As per claim 36**, Abrahams, Berverina and Heinrich teach the system of claim 34, wherein the web browser facilitates sharing resources with other programs to implement the mitigation plan. Claim 36 is rejected under a similar rationale as that of claim 32.

37. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Abrahams (2005/0086090), Beverina (2001/0027389), and Heinrich (6,895,383) in view of Examiner's Official Notice.

38. **As per claim 21**, the combination of Abrahams, Beverina and Heinrich teaches the claimed invention as mentioned in claim 19, above. Abrahams further teaches the system wherein the PF table has a plurality of risk categories, each said category having table entries that include standardized qualitative probability definitions (via Table 1, that shows an example of different risk probabilities, Table 1, p. 4) and the Cf table having a cost impact category with table entries for specifying multiple sub-categories of cost impacts in actual dollars for the development project, (via Table 2, that shows an example of different sub-categories, Table 2, p. 4) and tailoring the Pf table to have few categories that are relevant to the current project (§ 6, lines 7-8 teach that a user can select inherent values of likelihood and consequence for a risk [this data coming from Table 1 on p. 4]).

However, the Abrahams, Beverina and Heinrich combination fails to teach a schedule impact category with table entries for specifying a schedule impact amount in days, weeks or months and a web browser providing administrative access.

Examiner takes Official Notice that it is old and well known in the art of project management to measure negative impacts upon projects like delays in units of time such as days, weeks, or months. It would have been obvious to one skilled in the art at the time of invention to combine the table taught by Abrahams and Heinrich with

Examiner's Official Notice. Motivation to combine is to have an additional quantifiable way to measure consequences of a particular outcome.

Beverina, further teaches a web browser (Fig. 3), and administrative access (via Fig. 1 where the Senior Commander is the administrative access). It would have been obvious to one skilled in the art at the time of invention to combine the system of Abrahams, Beverina, and Heinrich in view of Examiner's Official Notice with the additional features of Beverina. Motivation to combine is to create a risk management system with more detailed information and easier access.

Conclusion

39. The Examiner has pointed out particular references contained in the prior art of record, within the body of this action for the convenience of the Applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply. Applicant, in preparing the response, should consider fully the entire reference as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael M. Thompson whose telephone number is (571) 270-3605. The examiner can normally be reached on Monday thru Friday 8am-5:30 except Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3629

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/Michael M Thompson/
Examiner, Art Unit 3629

/John G. Weiss/
Supervisory Patent Examiner, Art Unit 3629